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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,652	09/29/2006	Jean-Hilaire Saurat	3493-0175PUS1	2767

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EXAMINER	
KARPINSKI, LUKE E	

ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
05/26/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/587,652	SAURAT ET AL.	
	Examiner	Art Unit	
	LUKE E. KARPINSKI	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 April 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-7* is/are pending in the application.

4a) Of the above claim(s) *5 and 7* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4 and 6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/30/2006, 11/22/2006, 4/01/2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 5 and 7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected methods, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/01/2010.

Applicant amended claim 1, overcoming the prior art used to break unity. However, the restriction requirement to separate claims 5 and 7 drawn to a method of treating dermatoses is maintained based on the art cited below.

Claims 4 and 6 are rejoined and will be examined with claims 1 and 2.

Claims

Claims 1, 2, and 4-7 are pending.

Claim 3 is canceled.

Claims 5 and 7 are withdrawn.

Claims 1, 2, 4, and 6 are under consideration in this action.

Rejections/Objections

Claim Objections

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

dependent form, or rewrite the claim(s) in independent form. Claim 1 recites 50,000 to 750,000 Daltons and claim 2 recites 50,000 to 250,000 or 250,000 to 750,000 Daltons, Claim 2, as a whole, does not further limit the molecular weight range of claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant recites a method for preventing wrinkled skin. Since the instant specification provides no limiting definition of the term "prevention", the examiner will adopt the broadest reasonable interpretation for same. Webster's Ninth New Collegiate Dictionary defines "prevention" as "to keep from happening or existing", i.e., to completely eradicate. And since it is not possible to completely keep skin from wrinkling, applicant can not claim a method of such.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 2, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,193,956 to Liu et al. in view of USPN 4,303,676 to Balazs.

Applicant Claims

Applicant claims a composition comprising a hyaluronate fragment with a molecular weight of 50,000 to 750,000 Da and a retinoid selected from retinol, retinal, and esters of retinoic acid.

Applicant further claims a method of treating wrinkled skin comprising topical application of said composition.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Liu et al. teach topical compositions comprising retinol (col. 3, lines 18-32 and col. 10, lines 23-28), that retinoids are suggested for treating wrinkles and dryness of the skin (col. 1, lines 43-49), said compositions further comprising hyaluronic acid (col. 10, lines 19-28) and that hyaluronic acid provides moisturizing benefits and aids in treating wrinkles (col. 10, lines 23-28 and col. 11, lines 11-14), as pertaining to claims 1, 2, 4, and 6.

Ascertainment of the Difference between Scope the Prior Art and the Claims (MPEP §2141.012)

Liu et al. do not teach molecular weights of said hyaluronic acids as claimed in claims 1 and 2. This deficiency in Liu et al. is cured by Balazs. Balazs teaches moisturizing skin care compositions comprising hyaluronate at 10,000 to 200,000 and that lower molecular weight penetrates deeper into the tissue while higher molecular weight will not penetrate as far (col. 1, lines 59-67 and col. 2, line 59 to col. 3, line 2).

Finding of Prima Facie Obviousness Rational and Motivation

(MPEP §2142-2143)

Regarding the limitation of molecular weight, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Liu et al. with hyaluronate having a molecular weight of 50,000-750,000 as taught by Balazs in order to produce the invention of instant claims 1 and 2.

One of ordinary skill in the art would have been motivated to do this because Liu et al. teach hyaluronic acid used in topical skin care compositions used for moisturizing purposes and Balazs teaches hyaluronic acid and hyaluronate used in moisturizing skin care compositions and molecular weight ranges to use. Therefore it would have been obvious to utilize the hyaluronate molecular weights of Balazs, in the formulations of Liu et al. in order to produce moisturizing compositions using hyaluronate with a known molecular weight..

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

Claims 1, 2, 4, and 6 are rejected.

No claims are allowed.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUKE E. KARPINSKI whose telephone number is (571)270-3501. The examiner can normally be reached on Monday Friday 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LEK

/Mina Haghighatian/
Primary Examiner, Art Unit 1616